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No. 94-886

In the Supreme Court of the United States

OCTOBER TERM, 1994

MICHAEL JACKSON, ET AL., PETITIONERS

v.

CULINARY SCHOOL OF WASHINGTON, LTD., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

BARBARA C. BIDDLE
JOHN S. KOPPEL
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTIONS PRESENTED

1. Whether the court of appeals, which was not exercising jurisdiction based upon diversity of citizenship, erred in failing to apply the choice of law rules of the forum State.

2. Whether a federal court may decline to entertain an action for declaratory relief that presents complicated choice of law, preemption, and local law issues that could better be decided in future proceedings.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A24) is reported at 27 F.3d 573. The decision of the district court is set forth in two opinions, a March 26, 1992, opinion and order (Pet. App. A25-A76) reported at 788 F. Supp. 1233, and a January 6, 1993, opinion and judgment (Pet. App. A77-A94) reported at 811 F. Supp. 714.

JURISDICTION

The judgment of the court of appeals was entered on June 24, 1994. A petition for rehearing was denied on August 17, 1994. Pet. App. A95. The petition for a writ of certiorari was filed on November 15, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title IV of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1070 *et seq.*, established the Guaranteed Student Loan Program (GSLP) to "assist in making available the benefits of postsecondary education to eligible students * * * in institutions of higher education." 20 U.S.C. 1070(a). Under the GSLP, the government provides interest subsidies and special allowances to eligible lenders, see 20 U.S.C. 1078(a), 1087-1 (1988 & Supp. V 1993), and insures against borrower default, see 20 U.S.C. 1078(c) (1988 & Supp. V 1993). The government does not disburse funds directly to students. Rather, private lenders advance their own funds to eligible students; state and private guaranty agencies guarantee the loans against default; and the Department of Education acts as reinsurer of 80% to 100% of the state or private guaranty agency's losses, if the latter's diligent collection efforts prove unsuccessful. 20 U.S.C. 1078(c)(1) (1988 & Supp. V 1993). The Secretary of Education (Secretary) may demand assignment of any defaulted loan on which he has made a reinsurance payment to a guaranty agency. 20 U.S.C. 1078(c)(8) (Supp. V 1993).

2. Petitioners are 58 former students of the now-defunct Culinary School of Washington, Ltd. (CSW). Pet. App. A2. Respondent CSW participated in the GSLP program between 1982 and 1990, and petitioners were GSLP-assisted students at the school at various times between May 1, 1985, and early 1990.[1] *Id.* at A5, A6.

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[1] During that period, loan application forms were prepared by guaranty agencies and approved by the Secretary. Pet. App. A4-A5. As the court of appeals noted (*id.* at A5 n.5), however, Congress in 1992 directed the Secretary to develop a common loan application form to be used by all GSLP participants. See 20

CSW purported to offer vocational training and certification in the culinary arts that would qualify students as gourmet chefs, and it made numerous representations regarding quality of instruction, housing, transportation and job placement services for students. *Id.* at A5. After repeated complaints about the school's failure to perform in accordance with its representations, CSW filed for bankruptcy protection in January 1990, and in June 1990 it withdrew its application for a renewed operating license and ceased operations. *Id.* at A6.

3. In 1991, petitioners filed this action in the United States District Court for the District of Columbia, naming as defendants CSW, the lenders on their loans, the guaranty agencies, and the Secretary. Pet. App. A6-A7. Petitioners sought declaratory and injunctive relief against ongoing collection of their loan obligations. They alleged fraudulent inducement and breach of contract on the part of CSW, and contended that their claims against CSW could be asserted as defenses to enforcement of their loans. *Id.* at A7.[2]

The district court rejected petitioners' argument that their claims against CSW could be asserted as defenses against the lenders and their assignees, holding that federal law, as established in the HEA, preempts

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U.S.C. 1082(m)(1) (Supp. V 1993). That form incorporates the Federal Trade Commission's Holder Rule, which preserves all borrower claims and defenses against subsequent holders of the loan when the school has a referral or affiliation relationship with the lender. See note 3, *infra*. That form may well resolve on a prospective basis many of the questions presented below.

[2] CSW failed to appear, and a default judgment was entered against it. Pet. App. A7. There is no dispute that petitioners have valid fraud and breach of contract claims against CSW, but the now-defunct school is judgment-proof. *Id.* at A2.

application of two sections of the District of Columbia Consumer Credit Protection Act, D.C. Code Ann. §§ 28-3807, 28-3809 (1991), on which petitioners relied. Pet. App. A7; see also *id.* at A39-A40, A52-A57, A86-A87.

The district court also rejected petitioners' claims based on the Federal Trade Commission's Holder Rule,[3] finding that petitioners had no federal right to enforce the Rule and that, even in the absence of the notice required by the Rule, petitioners' loan agreements did not violate state law. Pet. App. A7-A8; see also *id.* at A42-A51, A87-A92. Finally, the court granted summary judgment for the Secretary on petitioners' claim that they were entitled to the benefit of the Secretary's "origination policy," under which the Secretary refrains from collecting on defaulted loans where the lender has delegated substantial functions to the school. *Id.* at A8, A83-A86. The court found that, as a factual matter, petitioners had failed to demonstrate sufficient delegation to trigger application of the origination policy. *Ibid.*

4. The court of appeals affirmed, but on different grounds. Pet. App. A1-A24. The court of appeals first concluded that the district court's exercise of discretion to grant or deny declaratory relief was subject to *de novo* review on appeal. *Id.* at A9-A12. Applying that

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[3] The Holder Rule, 16 C.F.R. 433.2, provides that it is "an unfair or deceptive act or practice * * * for a seller, directly or indirectly," to accept payment for or to receive a contract when the contract does not contain the following notice:

> Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

standard, the court of appeals determined that petitioners' D.C.-law-based claims required "in-depth preemption analysis" (*id.* at A13) and that that analysis implicated complex choice of law questions. *Id.* at A15. Given the multiplicity of jurisdictions in which the parties were domiciled and in which relevant events occurred, the court was "unable to say with confidence that D.C. law will apply in *any* future coercive action brought by the declaratory judgment defendants." *Ibid.* The court therefore "refuse[d] to undertake the highly speculative inquiry into whether D.C. law, which may or may not apply in a future coercive action, actually conflicts with the HEA. To do so would smack uncomfortably of an advisory opinion." *Ibid.* The court similarly declined to address petitioners' other D.C.-law-based claims, declaring itself "unwilling to engage in the delicate task of interpreting various local provisions in the absence of any assurance that such interpretation will be necessary or useful." *Id.* at A17.

Finally, the court of appeals rejected petitioners' federal claim based on the Secretary's origination policy. Pet. App. A17-A24. The court found no need to determine whether an origination relationship actually existed between CSW and the lenders, because the Secretary's statements of the origination policy did not amount to binding rules, and the policy therefore was unenforceable by petitioners. *Id.* at A24.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore unwarranted.

1. Invoking *Klaxon Co.* v. *Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941), petitioners

contend that the court of appeals' decision "conflicts with the decisions of this Court that require federal courts deciding questions of state law to apply the choice of law principles of the forum in which they sit." Pet. 13. Petitioners' reliance upon *Klaxon* and related decisions (Pet. 14) is misplaced.

The rule announced in *Klaxon* applies only to cases in which federal court jurisdiction rests upon diversity of citizenship. *Klaxon*, 313 U.S. at 494, 496; see also, *e.g.*, *Ferens* v. *John Deere Co.*, 494 U.S. 516, 519 (1990); *Day & Zimmermann, Inc.* v. *Challoner*, 423 U.S. 3, 3 (1975) (per curiam); *Griffin* v. *McCoach*, 313 U.S. 498, 503 (1941). *Klaxon* and its progeny therefore are inapposite to this case, for the district court's jurisdiction was based not upon diversity of citizenship, but upon other federal jurisdictional provisions, including 28 U.S.C. 1331 (federal question) and the doctrine of pendent jurisdiction.[4] Contrary to petitioners' assertion, the court of appeals' failure to apply *Klaxon* stemmed not from its "assumption that the *Klaxon* rule does not apply to declaratory judgment actions" (Pet. 14), but rather from the fact that *Klaxon* does not apply in the circumstances of this case.

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[4] Although petitioners' pleadings in the district court invoked the diversity statute, 28 U.S.C. 1332, as one basis for jurisdiction, it is clear from the face of the pleadings that complete diversity was lacking. See Complaint ¶¶ III(1) (C.A. App. 147-148), III(10) (C.A. App. 148) (both lead plaintiff and CSW domiciled in Washington, D.C.); Amended Complaint ¶¶ III(1) (C.A. App. 249), III(62) (C.A. App. 258) (same); see also Pet. App. A15. The diversity statute has been interpreted to require complete diversity. See *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 829 & n.1 (1989); *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U.S. 523, 530-531 (1967).

This Court has expressly declined to decide whether the *Klaxon* rule applies outside the realm of diversity jurisdiction. See *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447, 457 (1942) ("Whether the rule of the *Klaxon* case applies where federal jurisdiction is not based on diversity of citizenship, we need not decide."). In the more than half a century since *D'Oench, Duhme* was decided, the Court has never resolved the issue left open in that case. See, *e.g.*, *International Union* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, 705 n.8 (1966); *Richards* v. *United States*, 369 U.S. 1, 7 (1962). Thus, *Klaxon* does not control the instant case, and there is no conflict between *Klaxon* and the court of appeals' decision.[5] Nor would this be an appropriate case in which to consider whether *Klaxon*'s choice of law rule should be extended to non-diversity cases, because the court of appeals did not address the applicability of the *Klaxon* rule or decide what law should be chosen to resolve any non-federal law issues in this case. It pretermitted any such inquiry by concluding that declaratory relief should be denied as a matter of equitable discretion.

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[5] Petitioners erroneously assert that the court of appeals concluded that "declaratory relief must be denied in order to allow the defendant to select the forum," and argue that this decision conflicts with the rationale of *Van Dusen* v. *Barrack*, 376 U.S. 612 (1964). Pet. 15. As discussed more fully below, the court of appeals decided only that the unique posture of the current case made it infeasible and unwise for the court to attempt to resolve the choice of law issues presented, not that the declaratory judgment defendants should, as a normative matter, be given their choice of forum. See Pet. App. A15-A16; see also *Tempco Elec. Heater Corp.* v. *Omega Eng'g, Inc.*, 819 F.2d 746, 749 (7th Cir. 1987) (rejecting argument that discretionary dismissal "deprived [plaintiff] of its 'right' to bring a declaratory judgment action in the forum of its choosing").

Even if the court of appeals had reached the issue, since this is not a diversity case, refusal to apply the choice of law rules of the forum State would not "disturb the equal administration of justice in coordinate state and federal courts sitting side by side." *Klaxon*, 313 U.S. at 496 (citing *Erie R.R.* v. *Tompkins*, 304 U.S. 64, 74-77 (1938)). The considerations of comity that underlie *Erie* and *Klaxon* are not implicated in the absence of diversity jurisdiction, since the State does not have a comparable stake in application of its choice of law rules when the federal court is not sitting essentially in the local court's stead. In non-diversity cases, a failure to apply state choice of law rules does not "do violence to the principle of uniformity within a state." *Klaxon*, 313 U.S. at 496.

In short, it simply does not follow from *Klaxon* or its progeny that a district court must apply the choice of law rules of the forum in a non-diversity case. Rather, it may well be more appropriate for a federal court exercising federal jurisdiction to have latitude to weigh various factors—*e.g.*, express or implicit congressional intent, the nature of the federal question presented, the existence of contractual choice of law provisions, and the relationship between the forum and the cause of action—in making its choice of law determination. As this Court explained in *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580, 592 (1973), in questions "arising from and bearing heavily upon a federal regulatory program * * *, the choice-of-law task is a federal task for federal courts." See also *North Dakota* v. *United States*, 460 U.S. 300, 318 (1983) (same; "state law may be borrowed *if appropriate*") (emphasis added).

2. Petitioners also argue that the court of appeals' decision "substantially restricts the availability of declaratory relief in the federal courts." Pet. 16.

Contrary to petitioners' portrayal, the D.C. Circuit's decision was tailored to the unique and complicated facts of the instant case, and therefore was quite narrow. The court reasonably exercised its discretion[6] to deny declaratory relief because, on the instant facts, such relief would "serv[e] no useful purpose as a final determination of rights." *Public Service Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 247 (1952); see also *Green* v. *Mansour*, 474 U.S. 64, 73 & n.2 (1985). The decision below therefore hews to this Court's admonition that federal courts should avoid "futile or premature interventions." *Wycoff*, 344 U.S. at 243.

The parties in this case include 58 borrowers who "hail from all over the country," numerous lenders and primary guaranty agencies based in five States, a culinary school based in Washington, D.C., and the Secretary of Education, who is responsible for administering the nationwide federal student loan program. Pet. App. A3, A15. Fifty-eight individual loan agreements are involved, all of which apparently were signed by the borrowers in the District of Columbia, but approved by the lenders in various States outside the District. *Id.* at A15. All of the agreements, moreover,

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[6] As noted above, the D.C. Circuit adopted a *de novo* standard for review of a district court's exercise of discretion to grant or deny declaratory relief. Pet. App. A11-A12. There is no reason for the Court to hold this case pending its decision in *Wilton* v. *Seven Falls Co.*, cert. granted, 115 S. Ct. 571 (Nov. 28, 1994) (No. 94-562), which presents, *inter alia*, the question of the proper standard for appellate review in such cases. Petitioners have not directly presented this question in their petition; they characterize it as a "subsidiary" question; and they acknowledge that it is "not clear whether [the standard of review applied] was determinative of the outcome of the judgment below." Pet. 23 n.12. Accordingly, the petition should not be held pending disposition of *Wilton*.

contained express choice of law provisions specifying non-D.C. law. *Id.* at A16. Federal law, as embodied in the HEA, provided the backdrop for each of those federally guaranteed loans, yet petitioners sought a declaration that D.C. consumer protection laws and regulations would provide defenses to enforcement of their loans.

Given the foregoing state of facts and circumstances, the court of appeals found itself "unable to say with confidence that D.C. law will apply in *any* future coercive action brought by the declaratory judgment defendants." Pet. App. A15. The court of appeals therefore properly "refuse[d] to undertake the highly speculative inquiry into whether D.C. law, which may or may not apply in a future coercive action, actually conflicts with the HEA." *Ibid.*[7] The court of appeals correctly added that "[t]o do so would smack uncomfortably of an advisory opinion." *Ibid.*

It is beyond dispute that "the declaratory judgment statute is an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." *Green* v. *Mansour*, 474 U.S. at 72 (internal quotation marks omitted). "The propriety of issuing a declaratory judgment may depend upon equitable considerations, and is also informed by the teachings and experience concerning the functions and extent of federal judicial power." *Ibid.* (internal citation and

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[7] Even if petitioners are correct that D.C. choice of law principles should be applied, it does not follow that those principles would require the application of D.C. *substantive* law (including the consumer protection provisions on which petitioners rely). Petitioners have failed to show, for example, that D.C. choice of law principles would not call for application of the law of the State where each petitioner resides or where the guaranty agreements were entered into, or of the non-D.C. law that is called for under the individual loan agreements.

quotation marks omitted). Federal courts exercising their discretion under the Declaratory Judgment Act are guided by the well-settled principle that declaratory relief is warranted only where a judgment will "clarif[y] and settl[e] the legal relations in issue" and will "terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." Edwin Borchard, *Declaratory Judgments* 299 (2d ed. 1941); see also *Wycoff*, 344 U.S. at 242-243 (declaratory relief available only when the "controversy admit[s] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts") (citation omitted).[8] The court of appeals' conclusion that those purposes would not be served in the instant case was reasonable and does not conflict with decisions of this Court or other courts of appeals. Petitioners cite no case, and we have found none, that involves similarly complicated questions of preemption, choice of law, and interpretation of local law.[9]

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[8] These principles support the court of appeals' additional "unwilling[ness] to engage in the delicate task of interpreting various local provisions in the absence of any assurance that such interpretation will be necessary or useful." Pet. App. A17.

[9] To the extent remotely analogous decisions exist, they support the court of appeals' ruling. In *Century Indemnity Co.* v. *McGillacuty's, Inc.*, 820 F.2d 269 (1987) (per curiam), for example, the Eighth Circuit affirmed the dismissal of a suit by an excess liability insurer seeking a declaration of non-liability. Because the underlying tort liability of the insured had not been established and was being adjudicated in a pending state court action, the district court dismissed the federal suit because "there m[ight] never be any need to decide how the [insurance] coverage should be divided." *Id.* at 270. The court of appeals affirmed, noting that "[i]t would be a misuse of limited judicial resources to decide hypothetical issues." *Id.* at 271. See also *Transamerica Occidental*

The court of appeals' ruling thus is narrow and does not "substantially restric[t] the availability of declaratory relief." Pet. 16. At most, it stands for the eminently reasonable proposition that declaratory relief is unavailable in a limited class of cases—such as the instant case—that involve variously situated parties and raise exceptionally complicated choice of law, preemption, and local law issues, where a resolution of the questions presented might prove wholly unnecessary. Petitioners' assertion that the court of appeals' holding represents a major limitation upon the power of the federal courts to grant declaratory relief is unfounded.

3. Nor is there merit to petitioners' contention that the decision below "may deny petitioners *any* opportunity for adjudication of the merits of their claims that * * * penalties and collection actions are unlawful because their loans are subject to valid defenses." Pet. 17. Petitioners will have a fully adequate opportunity to litigate their claims and defenses in any future proceedings to collect on the loans or by challenging any potential wage garnishments or tax refund intercepts. See 20 U.S.C. 1095a(b) (Supp. V 1993); 34 C.F.R. 30.33(b)(3); 59 Fed. Reg. 22,462, 22,473-22,475, 22,488 (1994) (to be codified at 34 C.F.R. 682.410(b)(10)); see also, *e.g.*, *Grider* v. *Cavazos*, 911 F.2d 1158 (5th Cir. 1990);

Life Ins. Co. v. *Digregorio*, 811 F.2d 1249, 1251-1252, 1255 n.5 (9th Cir. 1987) (affirming district court's abstention where later-filed state action pending; case involved "intricate interplay of federal and state laws"; declaratory judgment plaintiff essentially "s[ought] a federal forum to interpret its contract"; and state courts were competent to determine preemption issues); *Pacific Employers Ins. Co.* v. *M/V Capt. W.D. Cargill*, 751 F.2d 801, 804 (5th Cir.) (affirming dismissal of "anticipatory" action for declaration of non-liability under insurance contract), cert. denied, 474 U.S. 909 (1985).

Hurst v. *United States Dep't of Educ.*, 901 F.2d 836 (10th Cir. 1990); *Thomas* v. *Bennett*, 856 F.2d 1165 (8th Cir. 1988). Petitioners correctly concede (Pet. 21 n.10), moreover, that nothing in the court of appeals' decision precludes a borrower from whom funds have already been collected from instituting an action to recover those funds.

Contrary to petitioners' contention (Pet. 17-19), there is no conflict between the decision below and this Court's holding in *Brillhart* v. *Excess Insurance Co. of America*, 316 U.S. 491 (1942). *Brillhart* set forth the factors a court must consider when dismissal of a declaratory judgment action is grounded on the pendency of a state court proceeding. *Id.* at 494-495. It is not disputed that no parallel proceeding was pending in this case, and the *Brillhart* Court did not "attempt a comprehensive enumeration of what in other cases may be revealed as relevant factors governing the exercise of * * * discretion" to deny declaratory relief. *Id.* at 495.

Petitioners' reliance (Pet. 18) on *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800 (1976), and its progeny is also misplaced. As numerous courts of appeals have recognized, the abstention principles addressed in the *Colorado River* line of authority do not strictly apply to suits for declaratory relief under 28 U.S.C. 2201, for a "district court's discretion under the Declaratory Judgment Act is significantly greater than under *Colorado River*." *United States* v. *Commonwealth of Pennsylvania, Dep't of Envtl. Resources*, 923 F.2d 1071, 1074 (3d Cir. 1991). See also *St. Paul Ins. Co.* v. *Trejo*, 39 F.3d 585, 590 & n.6 (5th Cir. 1994) (dismissal of declaratory judgment action need not satisfy "exceptional circumstances" test of *Colorado River*); *United States Fidelity & Guaranty Co.* v. *Murphy Oil USA, Inc.*, 21 F.3d 259, 263 (8th

Cir. 1994) (*Colorado River* factors merely inform district court's exercise of "expansive discretion" to abstain from hearing declaratory judgment actions); *Transamerica Occidental Life Ins. Co.* v. *Digregorio*, 811 F.2d 1249, 1254 (9th Cir. 1987) ("district courts' special jurisdictional discretion as to declaratory judgment suits [is] independent of the *Colorado River* analysis").[10]

Here, the court of appeals has in effect determined that a future action brought against individual petitioners (or a future challenge by one or more petitioners to a proposed wage garnishment or tax refund offset) would be a "better" mechanism for adjudicating the defenses that petitioners now seek to have resolved in an anticipatory manner. See *Brillhart*, 316 U.S. at 495; Borchard, *supra*, at 303 ("where the court believes that *more* effective relief can and should be obtained by another procedure * * * it is justified in refusing a declaration because of the availability of another remedy"). That conclusion was reasonable because, *inter alia*, in the context of a specific, individual proceeding, the choice of law issues can more easily be resolved.

Nor is it material that no case is currently pending in which petitioners' claims may be litigated. The court of appeals has prudently chosen not to adjudicate complex choice of law, preemption, and state law interpretation issues in a vacuum. If, in a later action brought against a

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[10] Petitioners' quotation from *Colorado River* is particularly inapposite (Pet. 18), for the "virtually unflagging obligation" (424 U.S. at 817) of federal courts to exercise jurisdiction granted them does not apply in the case of the discretionary jurisdiction conferred by the Declaratory Judgment Act. *El Dia, Inc.* v. *Hernandez Colon*, 963 F.2d 488, 493 (1st Cir. 1992).

particular petitioner, D.C. law were held not to govern the particular loan agreement at issue, any declaratory judgment as to the effect of D.C.-law-based defenses would prove to have been purely an "advisory opinion." Pet. App. A15. When petitioners actually are faced with imminent injury, they will have the opportunity to litigate all of their claims. Cf. *Abbott Lab.* v. *Gardner*, 387 U.S. 136, 148-149 (1967) (ripeness doctrine aims at "avoidance of premature adjudication," and requires court "to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration").

4. Finally, changes in the law since this action was commenced also underscore the wisdom of the court of appeals' approach and militate strongly against review here. As the court of appeals recognized (Pet. App. A5 n.5), the 1992 amendments to the HEA are likely to eliminate on a prospective basis many of the issues presented in this case. Moreover, the amendments also may provide protection to many of the petitioners in the instant case, thereby eliminating any need for resolution of their anticipatory defenses. See 20 U.S.C. 1087(c)(1) (Supp. V 1993) ("If a [student] borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part * * * is unable to complete the program in which such student is enrolled due to the closure of the institution * * *, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan").[11] Thus, review by this Court is unwarranted.

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[11] A number of petitioners allege that the school closed prior to the completion of their program of study. See, *e.g.*, Amended Complaint ¶ II(150) (C.A. App. 282) (Heriberto Vasquez); *id.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

BARBARA C. BIDDLE
JOHN S. KOPPEL
Attorneys

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¶ II(177) (C.A. App. 294) (Maria Vasquez); *id.* ¶ II(180) (C.A. App. 295) (Mathew Depompa). Those petitioners and others may qualify for discharge of their loans under the Secretary's regulations implementing Section 1087(c). 59 Fed. Reg. 22,462, 22,464-22,472, 22,477 (1994) (to be codified at 34 C.F.R. 682.402).